



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

November 24, 1959

Honorable Robert S. Calvert
Comptroller of Public Accounts
Capitol Station
Austin, Texas

Opinion No. WW-741

Re: Whether House Bill 11,
Third Called Session,
56th Legislature, 1959,
repealed the authority
for future annual trans-
fers on August 31 to the
Available School Fund.

Dear Mr. Calvert:

Your recent request for an opinion reads as follows:

"For many years the Motor Fuel Tax Fund has been allocated on the first day of each calendar month, under authority of Art. 7065b-25. This practice was followed thru August 1, 1959.

"Sec. 3 of H.B. 5, 1st Called Session, 56th Legislature, amended Art. 7065b-25. In Sec. 3 C, it was provided that allocations be made to the Available School Fund on August 31st of each fiscal year. Such allocation was made on August 31, 1959.

"H.B. 11, 3rd Called Session, 56th Legislature, provides for the allocation of Motor Fuel in Articles 9.25 and 10.22 of Section 1. Section 7 of H.B. 11 repeals Art. 7065b-25.

"I will thank you to advise me if H.B. 11, 3rd Called Session, 56th Legislature, repealed the authority for future annual transfers on August 31st to the Available School Fund."

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Article 7065b-25, Vernon's Civil Statutes, prior to its amendment by Section 3 of House Bill 5, Acts of the 56th Legislature, First Called Session, 1959, provided in part as follows:

". . .

"Each month the Comptroller of Public Accounts shall, after making the deductions for refund purposes, as provided in Section 13 of this Article, and for the enforcement of the provisions of this Article, allocate and deposit the remainder of the taxes collected under the provisions of this Article in the proportions as follows: One-fourth ($1/4$) of such tax shall go to, and be placed to the credit of the Available Free School Fund; . . ." (Emphasis ours).

Article 7065b-25 was amended by Section 3 of House Bill 5, Acts of the 56th Legislature, First Called Session, 1959, Section 3C of said Act provides as follows:

"All receipts due the Available School Fund which are in the Highway Motor Fuel Tax Fund on August 31st of each fiscal year shall be credited to the Available School Fund on August 31st of each fiscal year."

House Bill 11, Third Called Session of the 56th Legislature, 1959, provides for the allocation of motor fuel tax receipts in Articles 9.25 and 10.22 of Section 1 thereof. Article 9.25 provides in part as follows:

". . .

"Each month the Comptroller of Public Accounts shall, after making the deductions for refund purposes as provided in Article 9.13 of this Chapter, and for the enforcement of the provisions of this Chapter, allocate and deposit the remainder of the taxes collected under the provisions of this Chapter, in the proportions as follows: One-fourth ($1/4$) of such tax shall go to, and be placed to the credit of the Available Free School Fund; . . ." (Emphasis ours).

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Neither Article 9.25 nor Article 10.22 of House Bill 11 makes provision for annual transfers of motor fuel tax receipts to the Available School Fund, but to the contrary, Article 9.25 provides that such transfers and allocations be accomplished each month. Furthermore, Section 7(b) of Article 24-01 of House Bill 11 expressly repeals Article 7065b, as amended.

Inasmuch as House Bill 11 represents the latest expression of the Legislature on the subject, it is our opinion that the provisions thereof control the procedure to be followed in making transfers of motor fuel tax receipts to the Available School Fund. This Act, as above pointed out, provides for monthly transfers and by repealing Article 7065b-25, as amended, it has repealed the authority for annual transfers on August 31 to the Available School Fund.

SUMMARY

House Bill 11, Acts of the 56th Legislature, Third Called Session, 1959, has repealed the authority for future annual transfers of motor fuel tax receipts to the Available School Fund. Article 9.25 of House Bill 11, provides that the Comptroller of Public Accounts shall make such transfers monthly.

Yours very truly,

WILL WILSON
Attorney General of Texas


LP:mfh

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

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Paul R. Floyd, Jr.
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